IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINALL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.905 OF 2002

1. Smt. Kanchan Adhikari
   Adult, Indian Inhabitant,
   Occupation Writer/Director,
   Jeevan Anand, 2nd floor,
   Oberoi Complex,
   New Link Road,
   Andheri(W), Mumbai 53.

2. Shri Gautam Adhikari,
   Adult, Indian Inhabitant,
   Occupation Business,
   92/93, Avishkar Building,
   Erla Bridge, Vile Parle,
   S.V.Road, Mumbai 400 058.

3. Shri Markand Adhikari,
   Adult, Indian Inhabitant,
   Occupation Business,
   Jeevan Anand, 2nd floor,
   Oberoi Complex, New Link Road,
   Andheri(W), Mumbai 53.

4. SABe TV,
   Jeevan Anand, 2nd floor,
   Oberoi Complex, New Link Road,
   Andheri (W), Mumbai 53. ..Petitioners

versus

1. The State of Maharashtra

2. Mrs.Lalan Kamalakar Sarang,
   Actress, residing at 13/5C,
   Siddharth Nagar, Aunth,
   Pune 411 007 .. Respondents

Mr. Rahul Rao, Advocate for the petitioners.

Mr.B.H.Mehta, APP for the Respondent no.1.

Mr. Ganesh Gade for Respondent No.2.

CORAM : R.M.S.KHANDEPARKAR, J.

DATED : 25th January, 2005.

ORAL JUDGMENT :

1. Heard.

2. Rule. By consent, rule is made returnable forthwith.

3. The petitioners challenge the order dated 20.6.2002 passed by the Additional Sessions Judge, Pune, in Criminal Application No.738 of 2001. By the impugned order, the Revisional Court, while setting aside the order dated 3.10.2001 passed by the J.M.F.C. (A.C) Link Court No.1, Pune in R.C.C. No.439 of 2001 whereby summons was issued to the petitioner for production of certain materials, has issued the search warrant purportedly in exercise of powers under section 93(1)(c) of the Code of Criminal Procedure, 1973.

4. The impugned judgment is sought to be challenged on the ground that the Revisional Court, without arriving at any finding about either the need of the articles in question for the purpose of the trial, or that such articles would be necessary for any purpose in the course of enquiry, trial or proceeding before the Magistrate, has proceeded to issue the search warrant for the purpose of seizure of the articles which were enumerated by the respondent No.1 in her application which was filed before the Magistrate for the purpose of issuance of summons under section 91 of Cr.P.C.

5. Upon hearing the learned Advocates for the parties and on perusal of the record, it is seen that the Revisional Court merely held that the Sessions Judge may exercise the powers of the High Court under Section 401 of the Criminal Procedure Code and has proceeded to exercise its powers under Section 93(1)(c) of the said Code without ascertaining as to whether the materials on record justify the exercise of such powers and that too without any application in writing justifying the

exercise of such powers by the Court.

6. Undisputedly, respondent No.1 had approached the Court with an application under Section 64 of the Copyright Act, 1957 alleging that the petitioners have made, produced beta tapes, video cassettes, scripts, dialogues, screenplay in violation of the copyright of the respondent No.1. and all those articles were located at the address given in the application, and therefore, those premises were required to be searched and those articles to be seized under warrant, and in relation to the said application, the order came to be issued by the learned Magistrate in exercise of powers under Section 91 of the Code of Criminal Procedure. Considering the fact that no such summons can be issued in exercise of powers under section 91 of the Cr.P.C. to the accused, the Revisional Court has set aside the order of the learned Magistrate, but in the process, has directed issuance of search warrant purportedly in exercise of powers under section 93(1)(c) of the said code.

7. As rightly submitted by the learned Advocate for the petitioners, the impugned judgment nowhere discloses any justification for issuance of search warrant purportedly in exercise of powers under section 93(1)(c) of the said Code. The said provision of law clearly provides that where the court considers that the purposes of any inquiry, trial or other proceeding under the Code would be served by a general search or inspection, it may issue a search warrant. Obviously, therefore, before ordering issuance of search warrant, it is necessary for the court to analyse the materials placed before it and to arrive at the finding that the search warrant and/or the seizure of articles claimed would serve the purpose of enquiry or the trial or other proceeding, and only after arriving at the appropriate finding in that regard that the Court can order for issuance of search warrant. As already observed above, the impugned judgment nowhere discloses any justification for the Addl. Sessions Judge, Pune for ordering issuance of search warrant. It apparently discloses total non-application of mind by the Revisional Court

for the purpose of issuance of search warrant and the impugned order, therefore, has been passed in improper exercise of its jurisdiction under section 93(1)(c) of the said Cr.P.C. resulting in the miscarriage of justice. Being so, the same is liable to be set aside.

8. Needless to say that setting aside of the impugned order for issuance of search warrant can not prohibit the parties from approaching the learned Magistrate afresh, for any such search warrant if necessary, and the Magistrate is not forbidden from issuing such search warrant, if the case is made out for issuance of search warrant. However, these observations should not be construed to mean either as a mandate to Court of Magistrate to pass any such order, or the liberty to file such application, without any justifiable cause. Any application, if filed, the same will have to be decided on its own merits and in accordance with the provisions of law.

9. In the result, therefore, the petition succeeds. The impugned order is quashed and set

aside. Rule is made absolute in above terms with no order as to costs.

(R.M.S.Khandeparkar, J.)